

IN EFFECT AUGUST 7, 2007

R70. Agriculture and Food, Regulatory Services.

R70-560. Inspection and Regulation of Cottage Food Production Operations.

R70-560-1. Authority and Purpose.

- (1) Authority. Promulgated under authority of Section 4-5-9.5, Utah Code Annotated.
- (2) Purpose. The Department shall adopt rules pursuant to Title 63, Chapter 46a, Utah Administrative Rulemaking Act, as necessary to protect public health and ensure a safe food supply.
- (3) Adopted and Referenced. The Utah Department of Agriculture and Food hereby adopts and references the applicable provisions of the Food Protection Rule, Utah Administrative Code R70-530 issued by The Utah Department of Agriculture and Food, with specific exemptions as provided by Utah Code Annotated Title 4, Chapter 5, Section 9.5.

R70-560-2. Definitions.

The following definitions apply in the interpretation and application of this rule:

- (1) "Department" means the Utah Department of Agriculture and Food.
- (2) "Food Processing Plant" does not include a Cottage Food Production Operation.
- (3) "Section 26A-1-114" means Title 26A, Chapter 1, Section 114, Utah Code Annotated.
- (4) "Section 26-15a-102" means Title 26, Chapter 15a, Section 102, Utah Code Annotated.

R70-560-3. Approval of Food.

- (1) Prior to producing a food, the operator of a cottage food production operation shall:
 - (a) At the discretion of the Department, provide written confirmation from a Department approved food laboratory or process authority that the food is not potentially hazardous; and
 - (b) Receive approval from the Department to produce the food.
- (2) A cottage food production operation may only sell Department approved foods to the public.
- (3) When food includes fruits or vegetables grown by the operator of a cottage food production operation, the operator must have a current private pesticide applicator certification issued by the Department under Title 4, Chapter 14, Utah Code Annotated.

R70-560-4. Production Requirements.

- (1) A cottage food production operation shall:
 - (a) Ensure that each operator holds a valid food handler's permit;
 - (b) Use finished and cleanable surfaces;
 - (c) Maintain acceptable sanitary standards and practices;
 - (d) Provide separate storage from domestic storage, including refrigerated storage;
 - (e) Provide written evidence of compliance with zoning, building and other regulatory codes;
 - (f) Provide for annual water testing if not connected to a public water system; and
 - (g) Keep a sample of each food for 14 days. The samples shall be labeled with the production date and time.
- (2) A cottage food production operation shall comply with R70-530, except that it shall not be required to:
 - (a) Have commercial surfaces such as stainless steel counters or cabinets;
 - (b) Have a commercial grade sink, dishwasher or oven;

- (c) Have a separate kitchen; or
- (d) Submit plans and specifications before construction or remodeling;
- (3) A cottage food production operation is prohibited from all of the following:
 - (a) Conducting domestic activities in the kitchen when producing food;
 - (b) Allowing pets in the kitchen;
 - (c) Allowing free-roaming pets in the residence;
 - (d) Washing out or cleaning pet cages, pans and similar items in the kitchen; and
 - (e) Allowing entry of non-employees into the kitchen while producing food.
- (4) A cottage food must be prepared by following the recipe used to prepare the food when it was submitted for the approval testing required in Subsection R70-560-3(1). When a process authority has recommended or stipulated production processes or criteria for a food, these must be followed when the food is produced. The recipe and process authority recommendations and stipulations shall be available in the facility for review by the department.

R70-560-5. Inspections, Registration and Investigations.

- (1) The Department shall inspect a cottage food production operation:
 - (a) Prior to issuing a registration for the cottage food production operation; and
 - (b) If the Department has reason to believe the cottage food production operation is in violation of this chapter, or administrative rule, adopted pursuant to this section, or is operating in an unsanitary manner.
- (2) A cottage food production operation must register with the Department as a food establishment pursuant to Rule R70-540 and pay the required fee.
- (3) Notwithstanding the provisions of Rule R70-540, the Department shall issue a registration to an applicant for a cottage food production operation if the applicant:
 - (a) Applies for the registration;
 - (b) Passes the inspection required by Subsection R70-560-5(1);
 - (c) Pays the fee required by the department;
 - (d) Meets the requirements of this section;
 - (e) Provides written evidence of compliance with local zoning and business codes;
 - (f) Complies with all other, state, municipal, county codes, including plumbing codes, electrical codes and safety codes.
- (4) The registration issued under R70-540 shall be displayed at the cottage food production operation. A copy of the registration shall be displayed at farmers markets, roadside stands and other places at which the operator sells food from a fixed structure that is permanent or temporary and which is owned, rented or leased by the operator of the cottage food production operation.

R70-560-6. Cottage Food Labeling.

- (1) A cottage food production operation shall:
 - (a) Properly label all foods in accordance with state and federal law, including 21 CFR 1 - 199;
 - (2) Label information shall include:
 - (a) The name specified by regulation or, in the absence thereof, the name commonly used for that food or an adequately descriptive name;
 - (b) A list of ingredients in descending order of predominance by weight, when the food is made from two or more ingredients;

- (c) The name of the food source for each major food allergen contained in the food unless the food source is already part of the common or usual name of the respective ingredient;
- (d) An accurate declaration of the net quantity of contents;
- (e) The name and place of business of the cottage food production operation;
- (f) The telephone number of the cottage food production operation;
- (g) Nutritional labeling unless the product qualifies for an exemption; and
- (h) The words "Home Produced" in bold and conspicuous 12 point type on the principal display panel.

R70-560-7. Food Distribution and Storage.

- (1) Food shall be obtained from sources that comply with the law.
- (2) An ingredient used in a cottage food production operation, that is from a hermetically-sealed container, must have been produced at a food processing plant that is regulated by the appropriate food regulatory agency with jurisdiction over the plant.
- (3) A food offered for sale shall be safe, unadulterated, and honestly presented.
 - (a) Food shall be offered for human consumption in a way that does not mislead or misinform the consumer.
 - (b) Food or color additives, colored over-wraps, or lights may not be used to misrepresent the true appearance, color, or quality of the food.
 - (c) Food may not contain unapproved food additives, additives in unsafe amounts, or additives that exceed the amount necessary to achieve the needed effect.
 - (d) Food shall be protected from contamination, including contamination from chemical and pesticide hazards.
- (4) Food packages shall be in good condition and protect the integrity of the contents so that the food is not exposed to adulteration or potential contaminants.
- (5) Food that is unsafe, adulterated, or not honestly presented shall be discarded.
- (6) Except for unprocessed raw agricultural products, foods shall not be displayed or stored on the ground.
- (7) Ingredients used in a cottage food shall be in good condition, unspoiled and otherwise unadulterated. Ingredients cannot be used past the expiration date on the container if produced at a regulated food processing facility. Other ingredients may not be used if over 9 months old.

R70-560-8. Regulatory Jurisdiction.

- (1) Notwithstanding the provisions of Section 26A-1-114, a local health department:
 - (a) Does not have jurisdiction to regulate the production of food at a cottage food production operation, operating in compliance with this section, as long as the products are not offered to the public for consumption on the premises; and
 - (b) Does have jurisdiction to investigate a cottage food production operation in any investigation into the cause of a food born illness outbreak.
- (2) A food service establishment as defined in Section 26-15a-102, may not use a product produced in a cottage food operation as an ingredient in any food that is prepared by the food establishment and offered by the food establishment to the public for consumption.
- (3) Interstate sales of cottage food production operation produced foods are prohibited.

R70-560-9. Enforcement and Penalties.

A violation of any portion of this rule may result in civil or criminal action pursuant to Sections 4-2-12, 14 and 15, Utah Code Annotated.

KEY: food, cottage food, food establishment registration

Date of Enactment or Last Substantive Amendment: 2007

Authorizing, and Implemented or Interpreted Law: 4-5-9.5



State of Utah

JON M. HUNTSMAN, JR.
Governor

GARY R. HERBERT
Lieutenant Governor

Department of Agriculture and Food

LEONARD M. BLACKHAM
Commissioner

KYLE R. STEPHENS
Deputy Commissioner

RICHARD W. CLARK
Director, Regulatory Services

Welcome to the Utah Department of Agriculture and Food's new Cottage Food Production Operation program. A recent statute passed by the Utah state legislature will now allow Utah residents to produce non-potentially hazardous food products in their homes and offer them for sale within the state.

The Utah Department of Agriculture and Food (UDAF) has developed a proposed rule which lays out the requirements for a home food producer. The proposed rule is available on the UDAF web site at <http://ag.utah.gov/>. We invite any public comments on the proposed rule; the contact information is below. A public hearing will be held at the UDAF on July 19, 2007 at 1:00 pm.

The earliest date at which the proposed rule can go into effect would be August 7, 2007. Application forms will be available starting in late July. In the meantime, however, those of you interested in starting a home-based food business can certainly start the process. Additional information is also available on the web site, or can be sent to you upon request.

To start on the road to home food production, you can begin by writing down your recipes and descriptions of your processes. These may need to be approved by a food process authority to confirm that they are not potentially hazardous. You can also begin working on correct labels to meet both Federal labeling requirements and the specific additional requirements for a home produced product.

Please contact me for further information, or to make comments on the proposed rule. I look forward to working with you as you start your new business.

Rebecca Nielsen, REHS
350 North Redwood Road
P.O. Box 146500
Salt Lake City, UT 84114-6500
phone: (801) 538-4956
cell: (801) 860-7075
fax: (801) 538-4949
email: rjnielsen@utah.gov

4-5-9.5. Cottage food production operations.

(1) For purposes of this chapter:

(a) "Cottage food production operation" means a person, who in the person's home, produces a food product that is not a potentially hazardous food or a food that requires time/temperature controls for safety.

(b) "Home" means a primary residence:

(i) occupied by the individual who is operating a cottage food production operation; and

(ii) which contains:

(A) a kitchen designed for common residential usage; and

(B) appliances designed for common residential usage.

(c) "Potentially hazardous food" or "food that requires time/temperature controls for safety":

(i) means a food that requires time and or temperature control for safety to limit pathogenic microorganism growth or toxin formation and is in a form capable of supporting:

(A) the rapid and progressive growth of infections or toxigenic microorganisms;

(B) the growth and toxin production of *Clostridium botulinum*; or

(C) in shell eggs, the growth of *Salmonella enteritidis*;

(ii) includes:

(A) an animal food;

(B) a food of animal origin that is raw or heat treated;

(C) a food of plant origin that is heat treated or consists of raw seed sprouts;

(D) cut melons;

(E) cut tomatoes; and

(F) garlic and oil mixtures that are not acidified or otherwise modified at a food establishment in a way that results in mixtures that do not support growth as specified under Subsection (1)(c)(i); and

(iii) does not include:

(A) an air-cooled hard-boiled egg with shell intact;

(B) a food with an actual weight or water activity value of 0.85 or less;

(C) a food with pH level of 4.6 or below when measured at 24 degrees Centigrade;

(D) a food, in an unopened hermetically sealed container, that is processed to achieve and maintain sterility under conditions of nonrefrigerated storage and distribution;

(E) a food for which laboratory evidence demonstrates that the rapid and progressive growth of items listed in Subsection (1)(c)(i) cannot occur, such as a food that:

(I) has an actual weight and a pH level that are above the levels specified under Subsections (1)(c)(iii)(B) and (C); or

(II) contains a preservative or other barrier to the growth of microorganisms, or a combination of barriers that inhibit the growth of microorganisms; or

(F) a food that does not support the growth of microorganisms as specified under Subsection (1)(c)(i) even though the food may contain an infectious or toxigenic microorganism or chemical or physical contaminant at a level sufficient to cause illness.

(2) (a) The department shall adopt rules pursuant to Title 63, Chapter 46a, Utah Administrative Rulemaking Act, as necessary to protect public health and ensure a safe

food supply.

(b) Rules adopted pursuant to this Subsection (2) shall provide for:

(i) the registration of cottage food production operations as food establishments under this chapter;

(ii) the labeling of products from a cottage food production operation as "Home Produced"; and

(iii) other exceptions to the chapter that the department determines are appropriate and that are consistent with this section.

(3) Rules adopted pursuant to Subsection (2):

(a) may not require:

(i) the use of commercial surfaces such as stainless steel counters or cabinets;

(ii) the use of a commercial grade:

(A) sink;

(B) dishwasher; or

(C) oven;

(iii) a separate kitchen for the cottage food production operation; or

(iv) the submission of plans and specifications before construction of, or remodel of, a cottage food production operation; and

(b) may require:

(i) an inspection of a cottage food production operation:

(A) prior to issuing a registration for the cottage food production operation; and

(B) at other times if the department has reason to believe the cottage food production operation is operating:

(I) in violation of this chapter or an administrative rule adopted pursuant to this section; or

(II) in an unsanitary manner; and

(ii) the use of finished and cleanable surfaces.

(4) (a) The operator of a cottage food production operation shall:

(i) register with the department as a cottage food production operation before operating as a cottage food production operation; and

(ii) hold a valid food handler's permit.

(b) Notwithstanding the provisions of Subsections **4-5-9(1)(a)** and (c), the department shall issue a registration to an applicant for a cottage food production operation if the applicant for the registration:

(i) passes the inspection required by Subsection (3)(b);

(ii) pays the fees required by the department; and

(iii) meets the requirements of this section.

(5) Notwithstanding the provisions of Section **26A-1-114**, a local health department:

(a) does not have jurisdiction to regulate the production of food at a cottage food production operation operating in compliance with this section, as long as the products are not offered to the public for consumption on the premises; and

(b) does have jurisdiction to investigate a cottage food production operation in any investigation into the cause of a food born illness outbreak.

(6) A food service establishment as defined in Section **26-15a-102** may not use a product produced in a cottage food production operation as an ingredient in any food that

is prepared by the food establishment and offered by the food establishment to the public for consumption.

Enacted by Chapter 334, 2007 General Session

Download Code Section [Zipped](#) WP 6/7/8 [04_05011.ZIP](#) 4,598 Bytes

[Sections in this Chapter](#)[|Chapters in this Title](#)[|All Titles](#)[|Legislative Home Page](#)

Last revised: Monday, April 30, 2007

Food Processing Authorities

Brian Nummer, PhD, Extension Food Safety Specialist
Utah State University, Nutrition and Food Science Dept.

750 N 1200 E, Logan, UT 84322-8700

PHONE: 435-797-2116; FAX: 435-797-2379; Program Secretary 435-797-2139

E-MAIL: briann@ext.usu.edu

WEBSITE: <http://foodsafety.usu.edu> – Good starting point for low cost services to Utah residents; Process Authority Letter, Acidified Foods Processing Authority; all types of food - pH testing, food safety evaluation of your recipe, nutrition facts panel, Consumer, Retail, Foodservice, Producer Food Safety, Food Product Innovation Center, Utah Food Safety Coalition, food safety classes; Certified food safety manager, HACCP, Certified Cottage Food Safety Manager.

Richard H. Dougherty, Ph.D.; Professor, Extension Food Science Specialist
Department of Food Science & Human Nutrition, Washington State University

P.O. Box 646376, Office: FSHN 106J, Pullman, WA 99164-6376;

PHONE: (509) 335-0972

FAX: (509) 335-4815

E-MAIL: dougherty@wsu.edu

WEBSITE: www.foodprocessing.wsu.edu – Food Processing specialist, canned and vegetables, juices, soups, and other specialties; dehydrated potatoes and condiments; freeze dried products; snacks; seafoods; and meat and poultry products.

Grocery Manufacturers Association / Food Products Association (formerly National Food Processors Association / National Food Laboratory)

1350 I Street, Washington, DC 20005

Lisa Weddig, Director – Processing Technologies

202-637-8054

TechniCAL, Inc.

2400 Veterans Blvd., Suite 145, Kenner, LA 70062

Scott Cades, President

504-733-0300 x226

University of Nebraska, Institute of Agriculture and Natural Resources,
Food Processing Center

143 H.C. Filley Hall, East Campus, P.O. Box 830928, Lincoln, NE 68583-0928

Jill D. Gifford (Services include process determination, Better Process Control School and Entrepreneur Program)

402-472-2819

Other authorities may be found via your own Web search or through a industry specific manufacturers' association. Updated June 2007. On the next page is an explanation of the Utah State University services (more complete info can be found on their website or by calling Brian Nummer):

Food Product Label (Facts Panel) via ESHA program (\$45)

Using your recipe a computer generates a Nutrition Facts Panel in camera-ready format. We have just invested \$4000 in this new software program.

Food product food safety analysis (R&D level) (\$45)

This analysis involves analyzing your recipe/process; testing pH, brine pH, solids pH, water activity and/or other measurements to determine the risks and hazards associated with a particular food product/process. These basic food safety measurements can be made on freshly prepared samples that are sent to USU (Logan). Results are sent to the producer when completed.

Official “Process Authority” letter to Utah Dept Agriculture and Food (\$25)

Often the Utah Department of Agriculture – Food Compliance Division requires processors of foods to get a “Process Authority” letter. This letter states a professional opinion of the food safety of a particular product and process. A Food Product food safety analysis (above) is required to validate the safety parameters of the food product. In some complex cases a second opinion may be required and is usually obtained from a Washington State University Process Authority (an additional cost may be involved).

****Important Information****

All of your data will be held strictly confidential. The recipe/process will only be sent to UDAF in a Process Authority letter when needed. No other parties will have access to confidential information.

All of these analyses **REQUIRE** a complete recipe including ingredients *in detail*.

- Be specific. For example, garlic is not sufficient. We need to know if the garlic is chopped, dried, crushed, canned, etc. If you have an unusual ingredient, describe it in detail.
- We require a weighted measure versus can size. (E.g. #10 can of tomatoes will not work – we need to have the weight in pounds, ounces, or metric equivalent). Spices or dry goods can be in volume measurements, e.g. cups, tsp, tbsp, etc.
- We require a serving size. This is not arbitrary. Look on the internet or on a competitor’s product.
- We need to know your container size. A Nutrition Facts panel will print with the number of servings per container. You can send multiple container sizes to us and we will print out multiple panels at no extra charge.

For a Process Authority letter the complete process will need to accompany the recipe in detail. Describe all processing steps carefully. Describe containers and packaging.



U.S.U. Food Innovation Lab
Brian A. Nummer, Ph.D.

Utah Food Testing Laboratories

Name	Address	Phone No.	pH	A _w	Microbial * ¹	Water Quality	Shelf Life	Nutrition Labeling
Advanced Laboratories	195 S 3600 W, Ogden	801-731-6378	\$ 20.00	\$ 45.00	\$ 40.00	No	\$ 500 min.	\$ 650 * ²
Datachem Laboratories- Specializes in pesticides, heavy metals, aflatoxins	960 W Levoy Dr., SLC 84123	801-266-7700	No	No	No	No	No	No
ChemTech-Ford- specializes in water testing	6100 S Stratler Av.(380 W), SLC	801-262-7299	\$ 11.00	No	\$ 38.00	\$ 200.00	No	No
Miller Laboratories	1675 W 2750 S, Ogden	801-627-2202	\$ 12.00	\$ 60.00	\$ 115.00	Call for \$	\$ 250 min	\$ 1000 * ²
Nelson Laboratories - specializes in neutraceuticals/clean room testing	6280 S Redwood Rd., SLC	801-963-2600	No	No	Yes	Purified water standards	No	No
Richards Industrial - Micro Only	Pleasant Grove	800-453-1210	No	No	\$39	No	No	No
Utah State-Brian Nummer, Process Authority	USU, Nutrition & Food Science Dept., 750 N 1200 E, Logan Nutrition program calculation is free if you enter data in computer program yourself. Process Authority letter is \$ 25	435-797-2116	\$ 45 includes food safety evaluation of your recipe	\$ 45 includes food safety evaluation of your recipe	\$12 - \$ 45	No	Yes	\$ 45 Calculated by USU staff from your recipe
Crystal G Bartlett	dailyvalue@ureach.com	801-226-6929						\$100 * ³

*1 Micro testing \$ quoted are SPC(standard plate count), Yeasts & Molds, Coliform testing. It is best to call for exact quote and for other types of micro tests

*2 This cost reflects the higher \$ of laboratory analysis. Price is for basic FDA required info.; additional vitamins or minerals are extra. Actual lab analysis is usually not needed, unless you are making a claim. The computer program which calculates a camera ready label from your recipe is generally adequate.

*3 The price reflects calculating your nutrition facts panel from a recipe. Review of the entire label is \$ 80 per hour

Disclaimer: UDAF makes no guarantees as to the currency or accuracy of this information. It is provided as a convenience to assist you in finding laboratory resources. List Created 5/07 from info supplied by the laboratories.